

In the Matter of Merchant Mariner's Document No. 11876
Issued to: GUSTAVE ADAMS

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1194

GUSTAVE ADAMS

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 2 November 1959, an Examiner of the United States Coast Guard at New York, New York imposed a probationary suspension period against Appellant's seaman documents upon finding him guilty of misconduct. The specification found proved alleges that while serving as a messman on board the United States SS MORMACWREN under authority of the document above described, on or about 15 September 1959, Appellant assaulted and battered the ship's Chief Steward.

At the hearing, Appellant was represented by counsel of his own choice. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced the testimony of the Chief Steward and other evidence including an entry in the Official Logbook concerning this matter. Appellant testified in his defense. He completely denied the allegations. There was nobody else present at the time the Chief Steward claims that he was shaken by Appellant and struck on the shoulder with his fist.

OPINION

Among other points raised on appeal, it is denied that Appellant admitted, in his testimony, that he told the pantryman to get out of the storeroom, where the Chief Steward was, before telling the Steward that he was wanted by the Chief Mate. I agree that there is no admission by Appellant, contained in the record, that he said this to the pantryman.

The Examiner accepted the testimony of the Steward that he was struck by Appellant after the pantryman, who was leaving in any event, left the storeroom. The Examiner, in passing upon the credibility of Appellant and the Steward, indicated disbelief that Appellant would have told the pantryman to leave simply in order to tell the Steward that the Chief Mate wanted to see him. It thus appears that the Examiner's evaluation of credibility was in error if, and to the extent that, it was influenced by the Examiner's erroneous recollection that Appellant admitted having told the pantryman to leave the storeroom.

As a result of this error, the finding that Appellant is guilty is set aside and the case will be remanded for revision of the Examiner's decision after reconsideration of the issue of credibility. It is the function of the Examiner who heard and observed the witnesses when they testified to make findings as to the credibility of the witnesses. Although a prima facie case was established by the Government, Appellant's testimony in rebuttal should be evaluated by the trier of the facts on the basis of what his testimony actually was.

This action does not affect the two prior admonitions which are on Appellant's record. There is no provision for an appeal from admonition given by an investigating officer in lieu of a hearing.

ORDER

The charge and specification are dismissed. The order of the Examiner dated at New York, New York, on 2 November 1959, is VACATED. The record is REMANDED for further proceedings not inconsistent with this decision.

A.C. Richmond
Admiral, United States Coast Guard
Commandant

Dated at Washington, D.C., this 3rd day of October, 1960.

Issued to: GUSTAVE ADAMS

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

1194

GUSTAVE ADAMS

The record in this case was remanded for further proceedings by my decision on appeal dated 3 October 1960.

This appeal decision is amended by deleting the first sentence in the order which reads:

"The charge and specification are dismissed."

As amended, the decision of 3 October 1960 is affirmed.

A. C. RICHMOND
Admiral, U. S. Coast Guard
Commandant

Dated at Washington, D.C., this 26th day of October, 1960